

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH JAMES WEST,

Petitioner,

v.

ATTORNEY GENERAL OF THE STATE
OF CALIFORNIA,

Respondent.

No. 1:22-cv-00172-ADA-CDB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO GRANT
PETITIONER'S UNOPPOSED MOTION FOR
STAY

(ECF Nos. 30, 31)

Petitioner Kenneth James West ("Petitioner") is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) On July 22, 2022, Respondent filed a motion to dismiss the first amended petition. (ECF No. 19.) On November 30, 2022, the assigned Magistrate Judge issued findings and recommendations granting Respondent's motion and dismissing, without prejudice, Petitioner's first amended petition. (ECF No. 27). On March 7, 2023, the Court issued an order adopting the assigned Magistrate Judge's findings and recommendations and informed Petitioner he could request a stay of the petition in this Court to exhaust claims in state court. (ECF No. 29.)

On March 31, 2023, Petitioner filed a motion to stay this action. (ECF No. 30.) Respondent did not file a response to Petitioner's motion to stay. On April 21, 2023, the assigned Magistrate Judge issued findings and recommendations granting Petitioner's motion to stay and holding these

1 proceedings in abeyance while Petitioner exhausted his claims in state court. (ECF No. 31.) The
2 findings and recommendations advised Respondent that he must file any objections within 14 days
3 after service of the order and that the “failure to file objections within the specified time may waive
4 the right to appeal the District Court’s order.” (*Id.* at 5 (citing *Wilkerson v. Wheeler*, 772 F.3d 834,
5 839 (9th Cir. 2014); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).) Respondent did not
6 file objections or any other response to the findings and recommendations, and the deadline to do
7 so has passed. On May 5, 2023, Petitioner filed a notice of compliance of order to timely file a
8 petition in California state court. (ECF No. 32.)

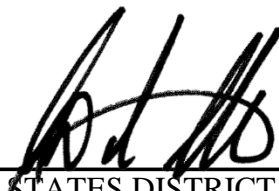
9 Pursuant to 28 U.S.C. § 636(b)(1)(C), and Local Rule 304, this Court conducted a *de novo*
10 review of this case. Having carefully reviewed the entire matter, this Court concludes the findings
11 and recommendations are supported by the record and by proper analysis.

12 Accordingly,

- 13 1. The April 21, 2023, Findings and Recommendations, (ECF No. 31), are adopted in full;
- 14 2. Petitioner’s motion for stay, (ECF No. 30), is GRANTED and these proceedings will be
15 held in abeyance while Petitioner exhausts his unexhausted claims in state court; and
- 16 3. Petitioner is directed to file in this Court, within 30 days after the filing date of the state
17 court’s order finally resolving Petitioner’s unexhausted claims, a motion to lift the stay in
18 this proceeding.

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21 IT IS SO ORDERED.

22 Dated: June 30, 2023

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UNITED STATES DISTRICT JUDGE